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REMARKS

Claims 1-19 are pending in this application. Claims 1-19 are directed towards a method of polishing a substrate including at least one metal layer. Claim 1 is currently amended. Applicants acknowledge that the Office Action has objected to claims 16-19, but would allow them if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Claims 1, 2, 4-6 and 8-10 are rejected on the grounds of 35 U.S.C. §102(b), as allegedly being anticipated by Hirabayashi *et al.* (US 5,575,885). The Office Action states that Hirabayashi *et al.* discloses a process for CMP of a Cu layer on a wafer using a CMP composition. The Office Action states that Hirabayashi *et al.* disclose aminoacetic acid, and alternatively, amidosulfuric acid as complexing agents.

The applicants respectfully disagree. However to advance the prosecution of this application claim 1 has been amended to include the limitation of claim 2. No new matter is introduced by this amendment. The complexing agents listed in the amended claim 1 are not anticipated by the complexing agents of Hirabayashi *et al.*, and therefore the rejection should be withdrawn.

Claims 3, 7 and 11-15 are rejected under 35 U.S.C. §103(a), as allegedly being unpatentable over the Hirabayashi *et al.* reference. The Office Action asserts that the reference discloses a CMP composition, but fails to teach the specific polishing parameters, the specific abrasive, and the use of a surfactant. The Office Action asserts that it would have been obvious to a person of skill in the art at the time of the invention to include all of the above parameters because they are known in the art.

The applicants respectfully disagree. In this regard, applicants traverse the taking of official notice by the Office Action. As the courts have found, “[w]ith respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.” See, e.g., *In re Zurko*, 258 F.3d at 1386, 59 U.S.P.Q. at 1697 (Fed. Cir. 2001). Furthermore, claim 1 has been amended, and as described above, the reference does not include all of the limitations of the applicant’s claims. For at least these reasons, applicants respectfully request that the rejections under 35 U.S.C. §103(a) be withdrawn.

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The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned agent.

Respectfully submitted,

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